

**REMARKS**

Claims 39-42 and 44-57 are pending in this application. New claims 58-62 have been added.

Summary of Telephone Interview on December 29, 2006

On December 29, 2006, a telephone interview was conducted between Examiner Mary Hoffman and Applicants' attorney, Richard C. Kim. Also participating was Jude Paganelli, an employee of the Assignee of record, NSpine, Inc. Applicants wish to thank Examiner Hoffman for her time and consideration.

Mr. Kim faxed proposed claim amendments (for discussion purposes only) to Examiner Hoffman prior to the telephone interview. During an initial call, Examiner Hoffman agreed that if independent claims 39, 46 and 52 were further amended to recite that the recited connection unit is sized and configured to be "completely implanted" within the patient, the claims would distinguish over the cited prior art. Previously, the word "completely" was not contained in the proposed amendments.

In a subsequent telephone call that same day, Examiner Hoffman informed Mr. Kim that she believed claims 46 and 52 needed to be further amended to distinguish over US 20030220643 (Ferree). More specifically, it was agreed that these claims need to make clear that the "first element" and the "second element" recited in these claims are distinct and separate elements from the "first securing member" and the "second securing member," respectively. Accordingly, Applicants have further amended claims 46 and 52 by adding in the phrases "wherein the first element is a distinct and separate element from the first securing member" and "wherein the second element is a distinct and separate element from the second securing member."

Claim Rejections Under 35 U.S.C. § 102

Claims 39-42, 46-48 and 52-54 were rejected as being anticipated by U.S. Patent No. 3,669,133 to Hyman ("Hyman"), which discloses a multi-sectional and collapsible walking cane.

Each of independent claims 39, 46 and 52 has been amended to recite that the claimed connection unit is “sized and configured to be completely implanted into a patient.” As discussed and agreed to during the telephone interview, Hyman does not disclose or suggest a connection unit configured to be completely implanted into a patient. Accordingly, Applicants respectfully submit that the Examiner’s rejection of claims 39, 46 and 52, and their respective dependent claims, as anticipated by Hyman has been overcome.

Claims 39, 41-42, 46-48 and 52-54 were rejected as being anticipated by U.S. 2004/0236327 to Paul et al (“Paul”). However, as discussed and agreed to during the telephone interview, Paul neither discloses nor suggests a connection unit having end portions or elements (e.g., “first and second elements”) that substantially limit motion of a center spacer or element in a longitudinal direction, as recited in each of independent claims 39, 46 and 52. Accordingly, Applicants respectfully submit that the Examiner’s rejection of independent claims 39, 46 and 52, and their respective dependent claims, as being anticipated by Paul has been overcome.

Claims 39, 44-47, 49-53 and 55-57 were rejected as being anticipated by U.S. 2003/0220643 to Ferree (“Ferree”). However, as discussed and agreed to during the telephone interview, Ferree neither discloses nor suggests a connection unit having end portions or elements (e.g., “first and second elements”) that substantially limit motion of a center spacer or element in a longitudinal direction, as recited in each of independent claims 39, 46 and 52. Furthermore, as agreed during the subsequent telephone discussion on December 29, 2006, Applicants have further amended claims 46 and 52 to make it clear that the first and second elements are distinct and separate elements from the recited first and second securing members, respectively. In Ferree, it is the heads of the pedicle screws that impinge upon the sleeves 610 and 612. (See Ferree, ¶ [0029]). In contrast, the connection unit of the present invention has elements, which are distinct and separate from the securing members, for limiting the motion of a center element. Accordingly, Applicants respectfully submit that the Examiner’s rejection of independent claims 39, 46 and 52, and their respective dependent claims, as being anticipated by Ferree has been overcome.

Claim Rejections Under 35 U.S.C. § 103

Claims 44-45, 49-52 and 55-57 were rejected as obvious over Hyman. However, as discussed and agreed to during the telephone interview, Hyman neither discloses nor suggests a connection unit that is sized and configured to be completely implanted within a patient, as now recited in independent claims 39, 46 and 52. Accordingly, Applicants respectfully submit that these independent claims and their respective dependent claims are not obvious in view of Hyman.

Claims 44-45, 49-51 and 55-57 were rejected as obvious in view of Paul. However, as discussed and agreed to during the telephone interview, Paul neither discloses nor suggests a connection unit having end portions or elements (e.g., “first and second elements”) that substantially limit motion of a center spacer or element in a longitudinal direction, as recited in each of independent claims 39, 46 and 52. Accordingly, Applicants respectfully submit that the Examiner’s rejection of independent claims 39, 46 and 52, and their respective dependent claims, as being obvious in view of Paul has been overcome.

Non-Narrowing, Clarifying Amendments To Claims 47-51 and 53-57

Applicants have amended dependent claims 47-51 and 53-57 to clarify the intended scope of these claims. Applicants respectfully submit these amendments are not made for reasons of patentability and do not constitute narrowing amendments that would give rise to prosecution history estoppel.

New Claims 58-62

Applicants have added new dependent claims 58-62 to protect further embodiments of Applicants’ invention. These new claims are patentable over the prior art for at least the same reasons their respective base claims are patentable over the prior art, as discussed above. Applicants respectfully submit that no new matter has been added by these claims.

A New Search Is Not Required

Applicants respectfully submit that the above amendments do not necessitate a new search. Independent claims 39, 46 and 52 have not been significantly changed, only slightly narrowed and, therefore, the previous search for prior art against the broader original claims would have uncovered any relevant prior art against the claims in their currently amended form. Therefore, Applicants respectfully request an early indication of allowability of these independent claims and all respective dependent claims pending in this application.

**CONCLUSION**

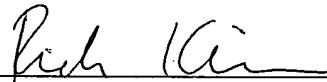
In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 559552000100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

By



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